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EXAMINER

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The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* MURRAY L. NEAL

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Appeal 2010-002753  
Application 10/788,716  
Technology Center 3600

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Before STEVEN D.A. MCCARTHY, CHARLES N. GREENHUT, and  
MICHAEL C. ASTORINO, *Administrative Patent Judges*.

ASTORINO, *Administrative Patent Judge*.

DECISION ON APPEAL

### STATEMENT OF THE CASE

The Appellant appeals under 35 U.S.C. § 134 from the Examiner's decision finally rejecting claims 1, 7-11, and 29-31. Claims 2-5 and 12-20 are withdrawn. Claims 6 and 21-28 are cancelled. We have jurisdiction over the appeal under 35 U.S.C. § 6(b). We AFFIRM.

### REJECTIONS

Claims 1, 7, and 8 are rejected under 35 U.S.C. § 102(b) as being anticipated by Koike (US 5,746,032, iss. May 5, 1998).

Claims 1, 7-9, 29, and 30 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Litchfield (US 4,525,966, iss. Jul. 2, 1985) and Owen (US 3,016,993, iss. Jan. 16, 1962).

Claims 10, 11, and 31 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Litchfield, Owen, and Montrouil (US 4,115,964, iss. Sep. 26, 1978).

### CLAIMED SUBJECT MATTER

Claims 1 and 29 are the independent claims on appeal. Claim 1 is representative of the subject matter on appeal. Claim 1 recites:

1. A window framing system, comprising:
  - a plurality of pieces that are structural components of a primary frame, wherein the pieces include a sub-frame and a base,
  - the sub-frame having a corner to receive a glazing unit,
  - the sub-frame has an elongated portion with an L-shaped cross-section that defines said corner, the L-shaped cross-section having a) a first

segment in which there are a first plurality of holes through which the sub-frame is to be secured to one of a head, jamb, and sill at a job site, and b) a second segment perpendicular to the first segment with a cavity having an enclosed cross-section formed therein that occupies a substantial portion of the second segment and runs lengthwise through a substantial part of the elongated portion,

the base to be assembled with the sub-frame so as to secure the glazing unit in the corner.

### OPINION

*Claims 1, 7, and 8 rejected as anticipated by Koike*

Koike discloses a sash frame including transverse frame members 1, 2 and 5, and vertical frame members 3 and 4. Col. 2, l. 64 – col. 3, l. 1, fig. 1. The sash frame is installed to an opening of a building body, for example “attachment transverse member 8 is attached to the lower edge portion C of the opening, and the lower transverse frame member 2 is attached to the attachment transverse member 8.” Col. 3, l. 16-22.

The Examiner finds Koike’s attachment transverse member 8 corresponds to a first segment of the sub-frame as recited in claim 1. *See* Ans. 3. The Examiner also finds Koike’s lower transverse frame member 2, body frame member 20, and an inward opening glass attachment channel 22 correspond to “a second segment perpendicular to the first segment with a cavity having an enclosed cross-section formed therein that occupies a substantial portion of the second segment” as recited in claim 1. Ans. 3-4, 7-8; Koike, col. 3, ll. 49-55, fig. 2.

The Appellant persuasively contends that Koike does not disclose “a cavity enclosed within a second segment, which in turn must be

perpendicular to the first segment.” App. Br. 3. More specifically, the Appellant correctly points out that “[p]ortions 20, 2, 22 only define three sides of the alleged cavity . . . [and, to enclose the cavity Koike’s] element 8 must further define a side of the cavity.” Reply Br. 3. However, the Examiner also defines element 8 as the first segment, which is required by claim 1 to be perpendicular to the second segment. Since element 8 makes up part up the second segment, it cannot also be part of the first segment because element 8 cannot be perpendicular to itself.

Thus, the rejection of claim 1, and dependent claims 7 and 8, as anticipated by Koike is not sustained.

*Claims 1, 7-9, 29, and 30 rejected as unpatentable over Litchfield and Owen; and Claims 10, 11, and 31 rejected as unpatentable over Litchfield, Owen, and Montrouil*

The Examiner finds Litchfield’s outer glazing beads 12, 12A correspond to the base as recited in claims 1 and 29. Ans. 5. The Examiner finds that Litchfield’s frame 5, body portion 6, shoulders 7, and wedges 17 correspond to the sub-frame as recited in claims 1 and 29, except that Litchfield’s sub-frame lacks a first segment having a “first plurality of holes through which the sub-frame is to be secured to one of a head, jamb, and sill at a job site” as recited in claims 1 and 29.<sup>1</sup> *Id.* The Examiner also finds that “Owen discloses holes through which screws (32, left and right, figure 1) secure the sub[-]frame to one of a head, jamb, and sill at the site.” *Id.* Screws 32 are secured into building framing members 35. Owen, col. 2, ll. 48-55; *see* Reply Br. 3-4. Additionally, the Examiner finds that the building

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<sup>1</sup> The Examiner construes “to be secured to one of a head, jamb, and sill at a job site” to be an intended use of the holes. Ans. 8.

frame, i.e., building frame 35, “may be any supporting structures including head, jamb, and sill.” *See* Ans. 8. The Examiner concludes that it would have been obvious to modify Litchfield’s structures with Owen’s holes because the holes enable secure fastening of the sub-frame in place, as taught by Owen. Ans. 5. The Examiner’s findings are supported by a preponderance of the evidence and the Examiner’s conclusion has rational underpinning.

The Appellant contends Owen’s holes are structurally different than the claimed holes because Owen’s screws 32 are inserted into the holes and then secured into the building frame 35. Reply Br. 3-4. However, the Appellant does not contend that the Examiner’s finding that building frame 35 “may be any supporting structures including head, jamb, and sill” (Ans. 8) is incorrect. *See* Reply Br. 3-5; *see also* App. Br. 7-8.

The Appellant does point out that claimed invention is directed to a head piece 114, having sub-frame 204 with a first segment 312 which may be secured to jamb piece 118. Reply Br. 4. This point indicates that the limitation of claims 1 and 29, “first plurality of holes through which the sub-frame is to be secured to one of a head, jamb, and sill at a job site”, can be construed to include the “first plurality of holes” for securing the first member to a head, jamb, or sill *abutting* an end of the sub-frame. *See* Reply Br. 4-5. However, claims 1 and 29 also include a construction as implied by the Examiner’s application of Litchfield and Owen; and, the Appellant does not explain why the Examiner’s application of Litchfield and Owen is incorrect. Thus the rejection of claim 1, and dependent claims 7-9, 29, and 30, as unpatentable over Litchfield and Owen is sustained.

Turning to dependent claims 10, 11, and 31, the Appellant does not offer arguments regarding the rejection of these claims as unpatentable over Litchfield, Owen and Montrouil, but merely rely on their dependency from independent claims 1 and 29. App. Br. 8. For the reasons provided above, the rejection of claims 10, 11, and 31 is sustained.

#### DECISION

We REVERSE the rejections of claims 1, 7, and 8 under 35 U.S.C. § 102(b) as being anticipated by Koike.

We AFFIRM the rejections of claims 1, 7-9, 29, and 30 under 35 U.S.C. § 103(a) as being unpatentable over Litchfield and Owen, and claims 10, 11, and 31 under 35 U.S.C. § 103(a) as being unpatentable over Litchfield, Owen, and Montrouil.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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